January 2006

Indiana County Courthouses

The Indiana Prosecutor

ASSISTANT EXECUTIVE DIRECTOR NAMED

Many of you have been eagerly awaiting the announcement regarding the new Assistant Executive Director for the Prosecuting Attorneys Council. We received many excellent applicants, and it was a difficult process for our Selection Committee. However, we believe the hard work was worthwhile.

The new Assistant Executive Director will be Suzanne O'Malley. She has been a deputy prosecutor in Marion County for over 15 years. She began in the Domestic Violence Unit and the D Felony Division. Her next five years were spent as a trial attorney in the Child Abuse/Sex Crimes Division and after that, she became the screening deputy for this Division. Additionally, she is also currently the Executive Director of the Marion County Child Advocacy Center.

Suzanne is excited about the opportunity, and we are eager to have her here. She will begin on February 27th. ❖

MOST IMPORTANT CRIMINAL LAW CASE THIS TERM OF THE U.S. SUPREME COURT WILL BE FROM INDIANA

As discussed in the November 2005 Newsletter, the United States Supreme Court granted certiorari in the Indiana case of *Hammon v. State*, 829 N.E.2d 444 (Ind. 2005). This case, as well as a case from Washington state named *Davis* are expected to refine the definition of 'testimonial" evidence within the context of the U.S. Supreme Court case of *Crawford v. Washington*. Briefs were due this week and oral argument will be on March 20, 2006. Many amicus briefs have been filed, including one by the National District Attorneys Association. Indiana will be represented at the oral argument by Solicitor General Tom Fisher. ❖

WEBSITE WORTH A BOOKMARK

If you want to closely follow any case in the United States Supreme Court, including *Hammon*, you should visit the official website of the Court at http://www.supremecourtus.gov. There you will find not only the recent decisions that have been decided (appearing on the day they are handed down) but also the argument schedule, the merit briefs, argument transcripts, and even information on visiting the Court. ❖

Inside this Issue

Recent Decisions Update

Indiana

- **INDIANA SUPREME COURT HANDS DOWN IMPORTANT DECISION ON ACCOMPLICE LIABILITY**

Taylor v. State, ___N.E.2d___ (Sup. Ct. 1/17/06)

http://www.ai.org/judiciary/opinions/pdf/01170601fsj.pdf

Defendant Taylor and Bowling went to Anderson's home to demand money that Anderson allegedly owed Taylor. An argument followed and Anderson was shot and died. Taylor was convicted of murder and the Indiana Supreme Court sustained the conviction, finding the evidence sufficient. Taylor then sought post-conviction relief arguing that he was denied the effective assistance of counsel because his attorney failed to object to certain accomplice liability instructions. The Court of Appeals agreed. *Taylor v. State*, 820 N.E.2d 691 (Ind. Ct. App. 2005). The Supreme Court granted transfer and reversed this aspect of the Court of Appeals decision.

"Taylor's argument raises the question: Can an accomplice be guilty of a higher degree of homicide than the actual perpetrator of the killing?"

Taylor first argued that his attorney was ineffective because he did not object to instructions and a verdict form which permitted his conviction "without a unanimous verdict." The State had pursued two theories of how Taylor could be guilty of murder - either Taylor killed Anderson or Taylor aided and induced Bowling to kill Anderson. Apparently seven of the jurors after trial said that they did not believe that Taylor had been the actual shooter but had found him guilty of murder based on the court's accomplice liability instruction. The defendant argued that the jury should have been instructed that in order to convict him of murder the verdict had to be unanimous on one of the two prosecution theories. The actual jury instruction at issue said: "To sustain the charge of murder, the State must prove... that Kenyan L. Taylor did (1) knowingly or intentionally, (2) kill, (3) Walter Anderson *or* that Kenyon L. Taylor (1) knowingly or intentionally aided, induced or caused another person to (2) kill, (3) Walter Anderson."

"...while jury unanimity is required as to the defendant's guilt, it is not required as to the theory of the defendant's culpability."

On this issue the Indiana Supreme Court held: "This issue has been addressed in a number of jurisdictions, and many have found - as do we - that while jury unanimity is required as to the defendant's guilt, it is not required as to the theory of the defendant's culpability."

The next issue on accomplice liability was the one on which the Court of Appeals reversed. The language in the above quoted instruction was challenged because it did not state that the person who was aided, induced or caused to kill had to commit this act knowingly or intentionally. As the Supreme Court put the issue, "Taylor's argument raises the question: Can an accomplice be guilty of a higher degree of homicide than the actual perpetrator of the killing?" The Court said that Indiana had not previously addressed this question but courts in other jurisdictions had. Viewing these decisions the Court concluded: "We too find that an accomplice can be guilty of a greater homicide crime than the principal when the accomplice's mens rea is more culpable." Therefore, the instruction in this case was not erroneous and counsel was not ineffective for failing to challenge it. In a footnote the Court said this principle does not apply to accomplice liability cases dealing with *attempted* murder, citing *Bethel v. State,* 730 N.E.2d 1242 (Ind. 2000).

The defendant also contended that his attorney's performance was deficient because he did not tender a lesser included accomplice liability instruction or argue to the jury that Taylor could not be convicted as an accomplice to murder because the State failed to prove that Bowling was not acting recklessly (Bowling was allowed to plead guilty to conspiracy to commit criminal recklessness). The Court concluded that this was simply a variation of his earlier argument. "In other words, Taylor's argument is premised on the erroneous idea that an accomplice's mens rea can be no higher than the principal's; that if Bowling's mens rea was reckless, then Taylor's could be no higher. But we concluded earlier that an accomplices's mens rea can be higher than the principal's." In a footnote the Court said that Taylor might have been entitled to an accomplice to reckless homicide instruction if he was able to meet the requirements for a lesser included instruction under *Wright v. State*, 658 N.E.2d 563 (Ind. 1995).

The defendant next argued that appellate counsel in his earlier direct appeal was ineffective because he did not challenge the trial court's action in permitting the State to advance an accomplice liability theory at the end of the trial "without notice to the defense."

The Supreme Court stated: "The caselaw indicates that there was no error in allowing the State to pursue an accomplice liability theory at Taylor's trial. And we think those principles are valid even where the State proceeds during most of the trial on the primary theory that a defendant was the actual shooter. The caselaw provided sufficient notice to Taylor's defense counsel that the State had the option to pursue an accomplice liability theory."

Last of all on the accomplice issues, the defendant argued that there was no support for the accomplice liability theory in the evidence and that in order to pursue this theory the State had to "sponsor perjured testimony." Taylor contended that if Taylor was only an accomplice and Bowling was the actual shooter then Bowling committed perjury by testifying that Taylor shot Anderson. The Court disagreed. "The State advanced two theories - either Taylor shot Anderson or Taylor aided or abetted Bowling to shoot Anderson. Therefore, Bowling's testimony could have advanced either theory without the State sponsoring perjury. The importance of Bowlings's testimony was that it put Taylor at the scene of the crime; the fact that Bowling pointed to Taylor, rather than himself, as the actual shooter is of secondary importance to his testimony that Taylor was at the scene during the shooting." ❖

- **SUPREME COURT INTERPRETS "DOCTRINE OF COMPLETENESS" AS APPLIED TO A CHILD MOLESTER'S LETTER OF "APOLOGY" SENT TO JUDGE - INADMISSIBLE EVIDENCE OF CHILD MOLEST VICTIM "HEARING" DEAD BROTHER'S VOICE**

Sanders v. State, ___N.E.2d___(Sup. Ct., 1/12/06)
http://www.ai.org/judiciary/opinions/pdf/01120601fsj.pdf

A defendant charged with molesting a 12-year-old girl sent a "letter of apology" directly to the judge in the case. At trial the State admitted a copy of this letter that was redacted. Omitted from one of the paragraphs was language regarding the victim - "and that she had been molested by her father and her mother's boyfriend." The State apparently argued that to admit this evidence would violate the Rape Shield Rule, Rule 412. The Court of Appeals held that the trial court abused its discretion when it admitted the redacted version of the letter and that it had an unduly prejudicial effect on the jury. *Sanders v. State*, 823 N.E.2d 313 (Ind. Ct. App. 2005). The Supreme Court disagreed and reversed.

Although the defendant objected to the admission of the letter altogether, he argued in the alternative that if the letter was to be admitted the entire letter had to be admitted. This argument was based on the "doctrine of completeness" under Evidence Rule 106. The defendant characterized the letter as an "expression of remorse" rather than a confession; that the defendant did not want to put the victim through any further hardship. Therefore, the statement regarding the victim's past molestation was necessary to put this "intent" in its proper context. However, the Supreme Court said that a number of incriminating statements in the letter had nothing to do with whether the victim was previously molested. ("I did touch someone else's child"; "I have to accept this plea, because I did touch her"; "our sins will be forgiven"; and "something like this will never happen again as long as I live.") The Court said: "The letter taken as a whole - including the part omitted in the redacted version - is clearly an admission of wrongdoing, an apology, and a plea for mercy and forgiveness. That would not change if the reader knew that J.R. had been previously molested."

Thus, Sanders failed to demonstrate how J.R's belief that she had heard her deceased brother's voice affected her capacity to accurately observe,

The Court said the "completeness doctrine" is to "provide context for otherwise isolated comments when fairness requires it." The Court said the inclusion of the omitted language would not have changed the context of the letter from one of confession to one of sympathy for the victim.

The Court also held that the trial court properly determined that the probative value of the letter outweighed any prejudice. "We have found before that 'all relevant evidence is "inherently prejudicial" in a criminal prosecution, so the inquiry boils down to a balance of probative value against the unlikely unfair prejudicial impact the evidence may have on the jury. When determining likely unfair prejudicial impact, 'courts will look for dangers that the jury will substantially overestimate the value of the evidence or that the evidence will arouse or inflame the passions or sympathies of the jury....' As explained above, Sander's letter contains admissions of wrongdoing, an apology, and a plea for forgiveness. Considering the letter's contents and the fact that the defendant, himself, wrote the letter to the trial judge, we cannot say that the jury overestimated the value of this evidence or that the letter inflamed the jury's passions or sympathies."

The Supreme Court agreed with Court of Appeals decision on another point. The defendant wished to elicit testimony that the victim had been hearing her deceased brother's voice. The trial court granted the State's motion in limine to exclude such evidence. The Court of Appeals said: "In her deposition, J.R. testified that she had heard her brother's voice after he had died; however, she did not say when she heard his voice or if she had been hearing his voice around the time of the alleged molestation. Thus, Sanders failed to demonstrate how J.R's belief that she had heard her deceased brother's voice affected her capacity to accurately observe, remember, or recount the alleged incident with Sanders. For this reason, the trial court did not abuse its discretion in excluding the evidence introduced by Sanders regarding J.R.'s mental history because Sanders failed to establish its relevancy." ❖

Recent Decisions Update (continued)

- **LEAVING THE SCENE - WHAT IS AN "ACCIDENT"? - RETROACTIVITY OF NEW STATUTORY INTERPRETATION -**

Nelson v. State, ___ N.E.2d ___ (Ind. Ct. App., 1/20/06)
http://www.ai.org/judiciary/opinions/pdf/01200601ehf.pdf

This was a case where a truck driver was leaving a café and pulled onto a state highway, blocking both southbound and northbound lanes. Another truck driver had to steer his truck off the road to avoid a collision. This truck traveled a considerable distance before stopping, striking a building on the way. Another driver ran to this truck, looked in the cab and saw that the driver was dead. He gave a thumbs down sign to Nelson, the operator of the semi. The driver went to a nearby truck to call for help. Nelson drove away and was discovered 12 miles from the scene of the accident. A jury found the defendant guilty of leaving the scene of an accident. "Both parties agree that this appeal revolves around a simple question: Do the duties of a motorist, as set out in I.C. § 9-26-1-1, arise in an incident in which his or her vehicle does not make physical contact with another vehicle or person?"

The Court reviewed two Indiana cases, *Honeycutt v. State*, 760 N.E.2d 648 (Ind. Ct. App. 2001) and *Armstrong v. State*, 818 N.E.2d 93 (Ind. Ct. App. 2004). *Honeycutt* had held that 9-26-1-1 was limited to incidents involving a vehicle striking something that causes injury to a person or striking a person and causing injury. *Armstrong* disagreed and held that "accident" is meant to encompass more than incidents where someone or something is struck and would have found that the defendant in this case had a duty to remain at the scene. Nonetheless, because both *Armstrong* and this case "constituted a significant change in the interpretation of I.C. §9-26-1-1," the Court held that it would not apply this interpretation retroactively to this case. Therefore, it held that the trial court should have dismissed the leaving the scene charges. ❖

Do the duties of a motorist, as set out in I.C. §9-26-1-1, arise in an incident in which his or her vehicle does not make physical contact with another vehicle or person?"

- **ALIBI NOTICE - EXCLUSION OF DEFENSE ALIBI WITNESSES WAS ERROR (THOUGH HARMLESS) DESPITE MID-TRIAL NOTICE TO PROSECUTOR -**

Washington v. State, ___N.E.2d ___ (Ind. Ct. App., 1/19/06)
http://www.ai.org/judiciary/opinions/pdf/01190601mgr.pdf

In this case after the jury was selected the defendant filed his late notice of alibi, identifying two alibi witnesses he intended to call. The trial court excluded those witnesses, finding that the defendant had not shown good cause for failure to timely file his alibi notice and I.C. 35-36-4-3(b) required the exclusion. A 2-1 majority of the Court of Appeals found this to be a denial of the defendant's 6th Amendment right to compulsory process. The majority said the belated filing of the alibi notice "appears to be a product of negligence rather than willful or purposeful misconduct." Later, in applying Art.1§13 of the Indiana Constitution (though defendant waived the issue because he did not raise it below), the majority said, "[t]rial courts have the discretion to exclude a belatedly disclosed witness where there is evidence of bad faith on the part of counsel or a showing of substantial prejudice to the State.... We believe that this standard is sufficient to protect a defendant's rights under Art 1, Section 13, and apply it here." As indicated above, the majority found negligence rather than bad faith. As for prejudice to the State, the majority commented: "A skilled prosecutor, even though given little time to prepare, could have revealed the weaknesses in McGinty's and Ross' alibi testimony." Though the majority found error in the exclusion of the witnesses, it held that the error was harmless.

"[t]rial courts have the discretion to exclude a belatedly disclosed witness where there is evidence of bad faith on the part of counsel or a showing of substantial prejudice to the State...

The concurring opinion of Judge Kirsch disagreed with this analysis. "My reading of *Baxter* [*Baxter v. State*, 522 N.E.2d 362 (Ind. 1988] and *Taylor* [*Taylor v. Illinois*, 484 U.S. 400 (1988)] leads me to believe that the courts were setting out guidelines by which the trial court was to exercise its discretion in making the determination of whether to exclude alibi and other defense evidence for discovery violations and important factors which must be weighed in that determination and that while it may be appropriate to exclude evidence for willful violation, the fact that the violation derived not from willfulness but oversight or inattention does not end the inquiry. Whether the discovery violation at issue is due to oversight or willful desire to gain advantage, the harm to the State is the same, and that harm must be factored into the decision to exclude or allow the evidence." ❖

Recent Decisions Update (continued)

- **POSSESSION OF "LOOK-A-LIKE" - GRITS RATHER THAN COCAINE - AUTO THEFT CONVICTION REDUCED TO CONVERSION WHERE JUVENILE WAS JOYRIDING -**

M.Q.M. v. State, ___ N.E.2d ___ (Ind. Ct. App., 1/18/06)
http://www.ai.org/judiciary/opinions/pdf/01180603tac.pdf

This case discussed two separate incidents involving the same juvenile. In the first case M.Q.M told students at his junior high school that he had cocaine in his locker. When his locker was searched a clear plastic bag was discovered which contained both a white powdery substance and a package labeled "Jim Dandy Enriched Quick Grits." An analysis of the substance determined that it was indeed grits and not cocaine. The juvenile court made a true finding that the juvenile possessed a substance represented to be a controlled substance in violation of I.C. 35-48-4-4.6. The Court of Appeals agreed. "It is undisputed that M.Q.M knowingly or intentionally possessed the corn grits and that he expressly represented them to be cocaine, a controlled substance. As the italicized portions of the statutes make clear [I.C. 35-48-4-4.5 (a), (b)(1)], this is all that is required to sustain a true finding of possession of a substance represented to be a controlled substance pursuant to Indiana Code Section 35-48-4-4.6(b). The plain language of the statute dictates that we disregard the 'delivery/finance/dealing' language in the Indiana Code Section 35-48-4-4.5(a) and focus on the description of the substance itself, as the crime of dealing is separate and distinct from the crime of possession."

> **"It is undisputed that M.Q.M knowingly or intentionally possessed the corn grits and that he expressly represented them to be cocaine, a controlled substance.**

The juvenile court also made a true finding that the juvenile was guilty of auto theft. M.Q.M. and some of his friends took his key to his parent's automobile and took turns driving the car. One of the friends spun out of control on a dirt road and crashed into a fence. M.Q.M. and his two friends got our of the car and ran through a cornfield before being apprehended by police. M.Q.M. admitted that he knowingly or intentionally exerted unauthorized control over his parent's car. However, he claimed he did not do so "with the intent to deprive the owner permanently of the use of benefit of the property." The Court of Appeals noted that in 1971 the Legislature deleted the word "permanently" from our theft statute but the Indiana Supreme Court has continued to read "permanently" into the theft statute to distinguish theft from criminal conversion. The Court of Appeals said it found no reason to interpret the auto theft statute differently than the general theft statute. The Court found that the evidence was insufficient to prove that M.Q.M. intended to "permanently" deprive his parents of the value or use of their car. Accordingly it reduced the adjudication to conversion. The Court did comment in a footnote. "We do not mean to suggest, however, as did M.Q.M.'s trial counsel, that a child cannot commit auto theft of his parents' motor vehicle." ❖

- **SEARCH WARRANT - UNSWORN PROBABLE CAUSE -GOOD FAITH -**

State v. Brown, ___ N.E.2d ___ (Ind. Ct. App., 1/17/06)
http://www.ai.org/judiciary/opinions/pdf/01170601ewn.pdf

The Court of Appeals holds that a search warrant was invalid where an officer appeared before a judge to provide probable cause, but was not sworn before he gave his testimony. Nor did good faith save the warrant. ❖

Recent Decisions Update (continued)

- **COURT OF APPEALS STRIKES AGAIN - REDUCES SENTENCE TO PRESUMPTIVE - *BLAKELY* - GUILTY PLEA - MENTAL RETARDATION -**

Williams v. State, ___ N.E.2d ___ (Ind. Ct. App., 1/17/06)

http://www.ai.org/judiciary/opinions/pdf/01170610pdm.pdf

During an argument with his sister Linda, defendant Williams twice rammed his sister's car with his vehicle. After Linda got out of her car Williams again rammed her unoccupied vehicle, causing it to strike her. She was thrown several feet by the impact. The State charged Williams with battery by means of a deadly weapon (a Class C felony), criminal recklessness and criminal mischief, both as Class A misdemeanors. The defendant entered into a plea agreement when he agreed to plead guilty to all 3 charges, with the sentences to run concurrently. In exchange the State agreed not to file charges of attempted aggravated battery as a Class B felony or attempted murder as a Class A felony. The Court sentenced the defendant to the maximum 8 year sentence for the battery charge.

"A defendant who willingly enters a plea of guilty has extended a substantial benefit to the state and deserves to have a substantial benefit extended to him in return."

The trial court relied on the nature and circumstances of the crime, particularly hitting his sister's car a third time, causing the sister to be thrown across the yard. The judge said, "I mean, this could be a murder case right now." The Court of Appeals said that the Indiana Supreme Court has recognized that the nature and circumstances of a crime are a proper aggravating factor under *Blakely* where the court rules upon specific facts admitted by a defendant. In this case the defendant acknowledged at the sentencing hearing that he had read the PSI and had no additions or corrections to make. The State argued that this amounted to an admission concerning the nature and circumstances of the crime but the Court said the particular facts relied upon by the judge in enhancing the sentence were not in the PSI. Therefore, under *Blakely*, the trial court could not rely on the nature and circumstances of the crime to enhance the sentence. The Court said the trial court could have relied on a juvenile adjudication as an aggravating factor but could not rely on a pending charge.

The majority of the Court of Appeals also found that the trial court improperly failed to find two mitigating factors. First, the majority said "A defendant who willingly enters a plea of guilty has extended a substantial benefit to the state and deserves to have a substantial benefit extended to him in return." [What about the facts here that the charges to which he plead guilty were to run concurrently and attempted aggravated battery and attempted murder were not filed?]

The majority also said, "Documented mental illness, especially if it has some connection to the crime involved, must be given some, and sometimes considerable, weight in mitigation." There was some testimony that the defendant might have had mild mental retardation and the majority felt that this should have been considered a mitigating factor.

The majority proceeded to reduce the defendant's 8 year sentence to the presumptive 4 year sentence.

Judge Riley dissented on this case. "Even though Williams entered a guilty plea, he has made no demonstration on the record that the State received a substantial benefit and thus the trial court did not abuse its discretion when it failed to address Williams' guilty pleas as a mitigating circumstance. The connection between Williams' mental illness and this offense is not clearly supported by the record. The mere fact that he was diagnosed with mental retardation does not equate to being a mitigating circumstance." ❖

- **DEPUTY PROSECUTOR IMMUNE UNDER FEDERAL CIVIL RIGHTS ACT FOR ALLEGEDLY ILLEGAL SENTENCE IN PLEA AGREEMENT -**

Hansborough v. Reickhoff, 400 F.Supp.2d 1100 (N.D. Ind. 2005.)

The details of this complaint brought by a prisoner in the Elkhart County Jail are not provided in the opinion. Hansborough sued the judge, a deputy prosecutor, Meteiver, and the sheriff. He claimed that the judge improperly sentenced him and that the deputy prosecutor "prepared the plea agreement and knew he was improperly sentenced." The Federal judge reviewing the complaint found that the judge and the deputy prosecutor had absolute immunity and the sheriff had no authority to release him. Regarding the allegations against the deputy prosecutor the Court said: "Mr. Hansborough alleges that Deputy Prosecutor Meteiver participated in the sentencing hearing and knew of the injustices that happened yet did nothing about them. Prosecutors have absolute immunity for the initiation and pursuit of criminal prosecution, including presenting the state's case at trial or any other conduct 'intimately associated with the judicial phase of the criminal process .... 'In initiating a prosecution and presenting the State's case, the prosecutor is immune from civil suits for dam-

(continued on page 7)

ages under §1983.... This immunity applies even where the prosecutor acts 'maliciously, unreasonably, without probable cause, or even on the basis of false testimony or evidence .....Negotiating a plea agreement and participating in a sentencing hearing constitutes conduct intimately associated with the judicial phase of the criminal process, so even if Mr. Meteiver was aware that Judge Rieckhoff erred in sentencing Mr. Hansborough, he is immune from civil damages." ❖

DEPARTMENT OF CORRECTION CHANGES POLICY ON MULTIPLE DEGREES FOR EDUCATIONAL CREDIT

At one time the Indiana Court of Appeals had ruled that a prisoner was entitled to multiple credit time cuts for educational achievements even though the educational progress was only earning associate degrees with very little time and effort required for the multiple degrees. *See Moushanek v. Anderson*, 718 N.E.2d 811 (Ind. Ct. App. 1999). In response, prosecutors requested that the Legislature grant the Department of Corrections authority to restrict such multiple time cuts and they responded by enacting legislation in 2003. See I.C. 35-50-6-3.3(k).

Last year Noble County Prosecutor Steve Clouse told his local representative, Rep. Stutzman, that the improper awarding of credit time was still occurring. A Bill was again introduced last year. When it was heard in the House Courts and Criminal Code Committee, the Committee was chagrined to learn that their 2003 directive had not been carried out. Many members of that Committee had sponsored the 2003 Bill. The DOC was directed to implement the authority it was given.

Attached to this Newsletter is DOC Commissioner Donahue's response. Effective January 1, 2006, Executive Directive #05-29 will regulate the granting of multiple educational credit time cuts. ❖

JUDGE CRITICIZED FOR SUPER BOWL CHEER

From: The Associated Press—February 6, 2006

TACOMA, Wash. -- A judge overseeing a manslaughter case embarrassed prosecutors and upset the victim's family when she called for a Super Bowl cheer for the Seattle Seahawks before the start of the sentencing hearing.

As Judge Beverly G. Grant took the bench Friday, she asked everyone in court to say ``Go Seahawks." Dissatisfied with the low volume of the response, she told them to try again.

Only then did she hear statements from prosecutors, defense lawyers and relatives of the slain Tino Patricelli, as well as an apology from defendant Steve Keo Teang, before resentencing Teang to 13 1/2 years in prison.

``The tension was very high, and I thought it would be a way of people just thinking of something else and releasing it," Grant said afterward. ``It was a diversion tactic to bring unison in the group."

Kathy Patricelli, stepmother of the 28-year-old man who was shot in a fight outside a tavern, said she didn't join in the cheers.

``Super Bowl Sunday is Tino's one-year anniversary of the day he was murdered," she said. ``I was a little tiny bit offended -- well, a lot offended -- because this was kind of an important day for us. Cheering for the Seahawks with Steve Teang in the room, I didn't think it was appropriate."

Pierce County Superior Court personnel were embarrassed, sheriff's Detective Ed Troyer and deputy prosecutor Sunni Y. Ko said.

``One family is seeing a son go off to prison, and one family is here to find justice for their loved one who was murdered. It's important to them. Do you think they want to root for the Seahawks?" Ko said.

Grant said she didn't mean to offend anyone. ``If the prosecutor and the others took it that way, as far as I'm concerned, it's trite," she said. ❖